

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

OP.No. 32345 of 2000(A)

PETITIONER:

SWASTHIK SPICES, K.K. ROAD, KOZHIKODE.
REPRESENTED BY ITS MANAGING PARTNER, P.K. HASHIR AHAMED.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS:

1. SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH,
KOZHIKODE.
2. ASST. COMMISSIONER (ASSMT)-II, SPECIAL CIRCLE II,
KOZHIKODE.
3. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. C.K. GOVINDAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 55145 OF 2000 IN OP 32345 OF 2000

DISMISSED

19.12.2006

SD/-C.N.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT IN T.A.NO. 67/96
DATED 3.3.1997

EXT.P2 TRUE COPY OF THE PETITION FILED BY THE THIRD RESPONDENT BEFORE THE
FIRST RESPONDENT DATED 13.11.1997

EXT.P3 TRUE COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT DATED 10.8.2000

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P.NO. 32345 OF 2000

Dated this the 19th day of December, 2006

JUDGMENT

Petitioner is challenging Ext.P3 order of the Sales Tax Appellate Tribunal whereunder the Tribunal through rectification proceedings issued under Section 43 of the KGST Act reversed their earlier order in appeal issued in the petitioner's case vide Ext.P1. The contention of counsel for the petitioner is that the issue raised in rectification application filed by the State is not a rectifiable mistake and it is a debatable point. However, on going through the impugned order of the Tribunal issued under Section 43 of the Act I find that the order in appeal sought to be rectified was issued by the Tribunal under a mistaken understanding of the judgment of this Court based on which appeal was decided.

2. Petitioner was a dealer in spices like pepper, dry ginger, arecanut, etc. which were subjected to turnover tax as provided under Section 5(2A) of the Act which was introduced with effect from 1.7.1987. The levy was initially at the penultimate purchase point,

which was later extended to all points of purchase in the State. However, vide SRO 717 of 1988 exemption was granted to turnover tax at points of sale, except at the penultimate purchase point in the State. The notification provided for a declaration to be obtained and produced by any dealer claiming exemption under the notification. The declaration provided in the notification provided for proof of payment of turnover tax by the other dealer from whom the dealer claiming exemption gets and produces declaration. In the judgment of this Court upholding the validity of the notification with the declaration reported in 1993 KLJ (TC) 432, this Court held that if the dealer does not furnish declaration obtained from the dealer from whom goods are purchased or by whom such goods are sold, the dealer should produce other evidence to prove requisite fact. This only means that details of payment should be produced either through declaration or through independent evidence. In short, details of payment of turnover tax by the dealer is a condition for claiming exemption. However, without understanding this, the Tribunal allowed the appeal originally on the ground that petitioner being a last purchaser cannot be the penultimate

purchaser. Therefore obviously there is mistake in the Tribunal's order in as much as they have misunderstood the scope of the judgment of this Court, which mistake they accepted when brought to their notice by the State through rectification application.

In the circumstances Ext.P3 issued under Section 43 of the Act is perfectly in order. O.P. is therefore dismissed. However, I feel that even at this late hour, if the petitioner produces proof of payment of turnover tax by the other dealer, the Officer should consider the same and allow it if it is proved to have been paid for the same goods.

(C.N.RAMACHANDRAN NAIR)
Judge

